

Bankrupts and cheats: the unlucky and the crooked

New policies in bankruptcy and fraud control

**Australian Institute of Credit Management National
Conference**

Address by

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Minister for Justice and Customs

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Bankruptcy

Background

The plain fact is that Community confidence in the bankruptcy system has eroded.

The concern used to be that big business flouted bankruptcy laws.

The concern now is that small consumer debtors do not take bankruptcy seriously.

This is fuelled by rising numbers of bankrupts.

Bankruptcies have increased threefold over the last ten years.

They have doubled over the past five years, to a level of 26,376 in 1998-99.

Most of the growth is in 'consumer bankruptcies'.

The rising numbers are due to the following factors; excessive borrowing prompted by ready credit availability, perceptions of attainable living standards, and a lessening of the stigma attached to bankruptcy.

We cannot ignore the fact that community confidence in the bankruptcy system has eroded. That confidence must be restored.

The Government has developed a package of reforms to restore confidence in the bankruptcy system.

We want to:

- make it clear to debtors that bankruptcy is a serious choice,
- ensure that bankrupts who misbehave or don't cooperate are dealt with, and importantly,
- allow people who are insolvent to quickly make a fresh start.

Amendments to the Bankruptcy Act

(1) First, we propose to remove early discharge from bankruptcy.

At the moment, 60% of bankrupts are eligible for early discharge after 6 months. This just does not reflect the serious nature of the decision to become bankrupt.

Under our reforms, bankrupts will no longer be able to apply for an early discharge.

(2) Second, objections to discharge will be easier to uphold.

Recent Administrative Appeal Tribunal and Court decisions have weakened the effectiveness of the current provisions.

We will ensure that provisions for objections to discharge are real incentives for bankrupts to cooperate with the trustee.

Valid objections will extend a bankruptcy period by two years, or even in serious cases, five years.

(3) Third, there will be a new power to reject petitions.

If the Official Receiver considers a debtor would be able to repay the amount owing, is not insolvent, or is using bankruptcy for an improper purpose – he can reject the petition.

The Courts will be given stronger powers to annul bankruptcy entered into for an improper purpose.

(4) Fourth, we will establish a new Cooling-off period. This will benefit debtors and creditors.

Debtors will not become bankrupt until after 30 days from the date the Official Receiver accepts the petition.

Creditors will be notified of the lodging of the petition by the trustee, and will have 30 days in which to approach the debtor with suggestions of how they could assist the debtor repay debts and avoid bankruptcy (eg, consolidating debts).

Debtors will have time to reflect on their decision.

Within the 30 day period, the debtor will be able to withdraw the petition for bankruptcy.

(5) Fifth, our reforms will further facilitate the making of 'debt agreements'.

Debt agreements were introduced in 1996 as an alternative to bankruptcy for low income earners.

Many people cannot presently enter debt agreements because their income is too high.

Reforms will increase the income cut-off for debt agreements, so that more people who are able to repay debts are eligible to enter debt agreements.

The new threshold will be after tax income of \$56,000 (double the current limit).

(6) Finally, our reforms will reduce the automatic duration of bankruptcy from three to two years for those who cooperate with trustees.

This will allow people who are insolvent and who do the right thing to quickly make a fresh start.

These reforms are being backed up by practical action.

The AFP has recently established a service agreement with the Insolvency and Trustee Service, Australia (ITSA).

ITSA conducts investigations and compliance activity in relation to offences under the *Bankruptcy Act*.

- The Agreement clarifies role of ITSA and AFP in investigating offences under the Government's fraud control arrangements.

- Under the agreement, AFP will undertake 'strategic strikes' of habitual bankrupts, where a large amount of money is involved (aggregate over \$20,000), or where the matter has significant impact on creditors, after considering the nature of the creditors and their number.
- Importantly, successful prosecutions will be well publicised.

Fraud

Can I just turn briefly to fraud?

Fraud costs the community.

The Australian Institute of Criminology estimates that it costs between \$3 and \$3.5 billion per year.

The cost of fraud is higher than any other category of crime.

Fraud costs companies.

A KPMG survey found that 69 percent of companies that had been victimised once became repeat victims of fraud. Fraud costs these companies over \$1 million every time.

No company can afford to see this sort of money as an inevitable hidden cost of doing business.

Corporations can suffer 'psychological' damage from repeated victimisation that is not treated.

The AIC's trends and issues paper, *Organisations as Victims of Fraud*, notes that failing to take action against fraud inside a company can lead to a downgrading of the ethical standards within the organisation.

Ethical standards are a key to the success of Australian businesses on international markets, and are crucial to investor confidence, and to corporate growth and success.

Individuals also suffer when companies suffer from fraud.

Fraud can lead to lost profits, closure, downsizing, and redundancies.

This affects employees, their families, and the community.

Failure of companies has flow-on effects for other companies (eg: their suppliers, distributors), and their customers (eg: loss of down payments).

The Government response

The Federal Government is reviewing its approach to fraud.

We think that the existing structure is sound, but there is a need to review the components to ensure they remain relevant and appropriate to changing circumstances.

The Fraud control policy of the Commonwealth covers 130 Commonwealth government agencies.

It is designed to protect public money and property, and the integrity, security and reputation of public institutions.

Under the Policy agencies are responsible for:

- managing the fraud that arises from within their programs.
- undertaking comprehensive risk assessments and preventative action.
- Investigating minor or routine instances of fraud, with the Australian Federal Police handling the more serious cases.
- the Attorney General's Department and the AFP provide a support role.
- there is an emphasis on training fraud investigators and defining investigation standards, and on reporting.

We are trying to develop a National Approach to Fraud Control.

I have contacted State and Territory colleagues to determine if there is interest in a national approach and asked for it to be an agenda item at the next Australasian Police Minister's Council.

The States and Territories could use the principles underpinning the Commonwealth Policy, and share the Commonwealth's work on fraud investigator competencies and investigation standards.

We recognise the need for cooperation between government and the private sector.

Like physical borders, borders between public and private are increasingly meaningless.

Criminals are not choosy about whether victims are private or public institutions.

Consequentially, we are working on the concept of a 'Fraud Advisory Panel' to advise Government on fraud-related issues:

It would have private and public sector representation, and be a mechanism for the public and private sectors to learn from each other.

I very much hope that the Government will be able to assist, however in the end we need businesses to take responsibility for fraud control.

In parallel with the Commonwealth policy, managers should treat fraud control as an integral part of their job.

Fraud control should be a part of everyday management, not an activity "off to the side", considered once a year or when a crisis occurs.

Staff training is critical.

Private companies must increase reporting.

It is only by reporting offences that fraudsters will be stopped.

Successful prosecutions educate the community about the seriousness of fraud.

Prosecutions have deterrent effect.

People will not always realise that what has happened to them is fraud, and so we need continuous training and public education.

Closing

The bottom line of what I have to say on fraud is this.

Fraud is under reported and it's costing business billions of dollars. We can't afford to lose the money, or the jobs. We have to work together.

As to bankruptcy, the message is simple:

You have to think about it for 30 days. There's no more early discharge, and there's more power to trustees and receivers. The cooperative bankrupts who are genuinely trying to do the right thing will be able to start again sooner rather than later. That's a good thing.

Thank you

NEW BANKRUPTCY LAWS ADDRESS COMMUNITY CONCERN

"Reforms to the Bankruptcy Act will increase confidence in the bankruptcy system by ensuring that the system better balances the needs of creditors and debtors, Minister for Justice and Customs, "Senator Amanda Vanstone said today in announcing new bankruptcy laws.

"Many people think that bankruptcy is an easy option

"The package of measures I am announcing today will make bankruptcy tougher for bankrupts who do not cooperate with their trustees, encourage people to consider alternatives to bankruptcy, and address community perceptions that it is too easy to go bankrupt.

"These measures affect only personal bankruptcy.

"Currently approximately 60% of bankrupts are eligible for early discharge after 6 months. Many creditors feel that the possibility of being released from bankruptcy after 6 months does not reflect the serious nature of the decision to become bankrupt.

"Under amendments to the law to be introduced this year, bankrupts will no longer have a mechanism for early discharge.

"The amendments will also strengthen the provisions of the Act which allow trustees to lodge objections to discharge from Bankruptcy after the standard period.

"Bankrupts who do not cooperate with their trustees must know that this can result in severe consequences. Valid objections will automatically extend a bankruptcy period by at least two years or, in serious cases, five years. This will provide great incentive for bankrupts to help their trustees at all times.

"Bankrupts who do the right thing will be rewarded. Under these new measures, the standard period of bankruptcy will be two years. Previously, the minimum was three years, with; about 60% eligible for early discharge after 6 months.

"The amendments will also give people contemplating bankruptcy breathing space of about one month before the decision becomes final, allowing time to either change their minds or explore other options with their creditors.

"Debt agreements, a low cost alternative to bankruptcy, will be available to more people because the income threshold will be doubled to approximately \$56,000 after tax.

"Bankruptcy will still be available to people in severe financial difficulty who simply need a fresh start. However, these new measures will encourage people who should avoid bankruptcy to consider carefully other options before choosing bankruptcy.

